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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,222	08/15/2007	Wilhelm Mayer	VFM-40030	2695
66919	7590	06/18/2009		
PYLE & PIONTEK, LLC 221 N LASALLE STREET, ROOM 1207 CHICAGO, IL 60601			EXAMINER KURFUSS, ZACHARY L	
			ART UNIT 3617	PAPER NUMBER
			MAIL DATE 06/18/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/560,222

**Applicant(s)**

MAYER, WILHELM

**Examiner**

ZACHARY KUHFUSS

**Art Unit**

3617

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5 and 7-10 is/are rejected.
- 7) ☒ Claim(s) 2-4 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
- Paper No(s)/Mail Date 20051212
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. The article "Herstellung von Schienenfahrzeugen" described on page one of the specification is not listed in the IDS and therefore has not been considered. A copy of the document must also be provided in order to garner consideration because this foreign document is not readily available to the examiner.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "the front portion (4') is used without proper antecedent basis. Please replace "the" with "a". Additionally, "the anti climbing device (2') of another carriage" is used without proper antecedent basis. Please replace "the" with "an".

Claims 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Both claims use the phrase "it", when it is unclear what "it" refers to. For the purposes of examination it will be assumed that "it" refers to the anti-climbing device (2).

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "the convexly rounded front side" and "the entire width" are used without proper antecedent basis. Additionally, "said projecting front portion (4)" is used without proper antecedent basis (the term is referred to as "a projecting *central* front portion (4)" in claim 1). Therefore, it is suggested the claim be rephrased, "The anti-climbing device (2) as set forth in claim 1, characterized by a convexly rounded front side extending substantially across an entire width of the carriage, thereby forming said projecting central front portion."

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 5 and 8-10 rejected under 35 U.S.C. 102(e) as being anticipated by Yamamoto et al. (US 6,712,007).**

Referring to Claim 1: Yamamoto discloses an anti-climbing device (250) for railway carriages which is fixed at least at one end of the carriage at a defined height and extends over at least part of the carriage width (Fig. 4), characterized in that, for cooperation with the front portion of the anti-climbing device of another carriage in a rear-end collision situation (Col. 3, lines 43-49), a central cutout (open area between centering surfaces 250, see figs. 3 and 4), which is open toward the bottom and bounded by a guard surface (bottom surface of 160) toward the top, and two centering surfaces (front surface of 250) laterally bounding said cutout are provided beneath a projecting central front portion (160), a substantially horizontal fixing surface (bottom rib of 250) adjoining the lower end of each centering surface.

Referring to Claim 5: Yamamoto discloses the anti-climbing device as set forth in claim 1, characterized in that the anti-climbing device (250) has a front face with ribs (Fig. 4) (Col. 3, lines 43-49).

Referring to Claim 8: Yamamoto discloses the anti-climbing device as set forth in claim 1, characterized in that the anti-climbing device (250) is at least partially covered with a facing (front surface of 250) that is readily destructible in the event of a collision.

The front surface of anticlimber 250 satisfies the term "readily destructible", because the term "readily destructible" is a relative term and the anticlimber 250 is

designed for collision. The front surface could be considered "readily destructible" in comparison with a solid steel I-beam.

Referring to Claim 9: Yamamoto discloses a railway carriage (100) having an anti-climbing device (250) as set forth in claim 1.

Referring to Claim 10: Yamamoto discloses the railway carriage as set forth in claim 9, characterized in that the central projecting front portion (160) is the base of a connection (70) between railway carriages.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto in view of Schindler et al. (US 6,820,759) (“Schindler”).**

Referring to Claim 7: Yamamoto does not disclose that the front portion of the anti-climbing device is convexly rounded and extends substantially across the entire width of the carriage. However, Schindler teaches that the front portion of the anti-climbing device (6) is convexly rounded and extends substantially across the entire width of the carriage (Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention, to construct Yamamoto’s anti-climbing device as convexly round and extending substantially across the width of the carriage as Schindler teaches, because the convex shape is more adept at gradually absorbing the force of the collision; as the convex shape is being deformed inward more and more of its surface comes into contact with the colliding structure, which provides gradually increasing resistance, which is less jarring to passengers in the event of a crash.

#### ***Allowable Subject Matter***

Claims 2-4 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Clark et al. (US Publication 2008/0250965 A1) and Malfent et al. (US Publication 2008/0314282 A1) disclose similar anti-climbers with receiving portions but are not used in the rejection due to the applicant's effective US filing date 4/7/2004.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZACHARY KUHFUSS whose telephone number is (571)270-7858. The examiner can normally be reached on Monday-Thursday, 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel (Joe) Morano can be reached on (571)272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Z. K./

/S. Joseph Morano/

Art Unit: 3617

Examiner, Art Unit 3617

Supervisory Patent Examiner, Art Unit 3617